In the Supreme Court of the United States

OCTOBER TERM, 1962

No. 927

REGINALD G. HEARN and MARY L. HEARN,
PETITIONERS

v.

COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

Taxpayer[1] is an active practicing attorney with an office in San Francisco, California. For the years 1954-1956, he claimed substantial amounts as ordinary and necessary business expense deductions under Section 162(a) of the 1954 Internal Revenue

[1] Since all of the transactions at issue relate exclusively to Reginald G. Hearn, he alone will be referred to as "taxpayer."

Code[1] (Pet. App. i-ii, vii-viii). Expenses for such items as rent, salaries, telephone, books and publications and insurance were allowed in full by the Commissioner of Internal Revenue. The Commisioner, however, disallowed wholly or in part large deductions claimed for such other items as entertainment, promotion, professional clubs and dues, travel, taxi fares, automobile and boat depreciation, and automobile and boat expenses (Pet. App. ii-iii). Apart from stipulations covering the expenditure of certain amounts of money, taxpayer presented no records or proof with respect to the disallowed expenses other than his own testimony (Pet. App. iv, ix).

The burden was on taxpayer in the Tax Court to establish as a factual matter that he was entitled to the business deductions claimed. *Interstate Transit Lines* v. *Commissioner*, 319 U.S. 590; *Welch* v. *Helvering*, 290 U.S. 111. The Tax Court, however, held taxpayer's evidence too general and conclusory in nature to prove either that he actually spent the amounts in dispute or that such amounts, if spent, bore the necessary proximate relationship to his law practice (Pet. App. i-vi). The court of appeals agreed with the Tax Court's determination that taxpayer had failed to carry his burden of proof

---

[1] Internal Revenue Code of 1954 (26 U.S.C. 162):

SEC. 162. TRADE OR BUSINESS EXPENSES.

(a) *In General.*—There shall be allowed as a deduction all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business * * *.

* * * * *

and affirmed the lower court's decision (Pet. App. vii-xiv). The concurrent findings of both courts below on these issues should be considered final here. *Corn Products Co.* v. *Commissioner*, 350 U.S. 46, 51; *Comstock* v. *Group of Investors*, 335 U.S. 211, 213-214.

Indeed, taxpayer in his petition does not directly challenge the validity of these conclusions. Instead, he attempts to circumvent them by arguing that the two courts, in finding his proof insufficient, were actually requiring him, in order to secure the deductions he claimed, to violate the California laws protecting the privilege of the attorney-client relationship by disclosing the names and addresses of his clients, a disclosure he claims he refused to make (Pet. 3). This argument is totally devoid of merit. First of all, the record directly contradicts taxpayer's claim that he refused to divulge the names and addresses of his clients. Taxpayer testified in the Tax Court that the reason he did not provide the revenue agents with written records of his expenditures was that his was a small business operation which did not allow for the maintenance of such records (R. 61-62). In fact, where he could remember the names of clients, he freely offered them (R. 65-66). Moreover, when asked on cross-examination (R. 58), "Did you ever refuse to give any supporting evidence to the Revenue Agents?", taxpayer replied, "Not to my knowledge, Counsel."

The single decision relied upon by taxpayer is inapposite. In *Baird* v. *Koerner*, 279 F. 2d 623 (C.A. 9), it was held that an attorney who paid taxes

to the Internal Revenue Service on behalf of an undisclosed client could not be forced in a summons proceeding to divulge the name of that client under circumstances where no audit or investigation of the client's income tax liabilities was pending. There is no easy transfer of this holding to a situation where the attorney is attempting to substantiate his own income tax deduction. It is an attenuated argument, at best, that disclosure by an attorney that he had lunch with a client or prospective client constitutes disclosure of a "communication" or "confidence" of the client.

In any event, the question whether an attorney who is able to prove the dollar amount of a particular expense incurred must furnish the name of the client entertained is not reached in this case. Both courts below held only that the proof taxpayer offered was insufficient to justify the business deductions he claimed because too general and conclusory in nature (Pet. App. iv-v, x-xi). Neither court specified that taxpayer had to disclose the names and addresses of his clients. Even if taxpayer is correct in urging that he cannot be forced to disclose the names and addresses of his clients, he is not relieved of the burden of proving that he incurred the expenses he claimed and that these expenses were proximately related to his practice of law.

The real thrust of taxpayer's argument is that the uncredited testimony of an attorney compels the allowance of income tax deductions for travel and entertainment expenses, in any amount he desires to

claim. But there is no statute or judicial decision to which taxpayer can point in support of this special privilege. There is no conflict in the case law or any other reason for further review of the decision below.

The petition for a writ of certiorari should be denied.

Respectfully submitted,

ARCHIBALD COX,
Solicitor General.

LOUIS F. OBERDORFER,
Assistant Attorney General.

GILBERT E. ANDREWS,
EARL J. SILBERT,
Attorneys.

APRIL 1963.